



CONTRATO DE PRESTACION DE SERVICIOS DE CONSULTORÍA MCA-THP-04-2015

Nosotros, **Marco Antonio Bográn Corrales**, mayor de edad, casado, de este domicilio, Director Ejecutivo de la Cuenta del Desafío del Milenio de Honduras (MCA-Honduras, por sus siglas en inglés), con identidad número 0801-1977-13710, nombrado mediante Acuerdo Ejecutivo 004-2011 de fecha 27 de enero de 2011, actuando en representación de MCA Honduras, entidad adscrita a la Coordinación General de Gobierno y creada mediante Decreto número 233-2005, que para los efectos legales correspondientes se denominará **MCA Honduras (El Contratante)**, con facultades suficientes para la celebración de esta clase de actos, por una parte; **Leonel Edmundo Vivallos Medina**, mayor de edad, con domicilio en Quilapán 6837-Huechuraba, Santiago de Chile, Teléfonos: 56-9-9-8865724, con número de pasaporte P06966642; actuando en su condición personal, quien en lo sucesivo se denominará **El Consultor**, manifiestan que han convenido en celebrar, como al efecto lo hacen, un Contrato de Prestación de Servicios Profesionales, que estará regido por las cláusulas siguientes:

PRIMERA: NATURALEZA DE LOS SERVICIOS. Este Contrato de prestación de servicios profesionales es de naturaleza privada y se regirá por las disposiciones contenidas en el mismo. Por tanto, **El Consultor** expresamente declara y reconoce que no le son aplicables y no tiene derecho a exigir su participación en cualquier plan, arreglo o beneficio otorgado bajo la Ley de Servicio Civil. MCA-Honduras declara que para la ejecución del programa Umbral cuyo objetivo es mejorar la eficiencia y transparencia del Gobierno suscritos entre La Corporación del Desafío del Milenio y el Gobierno de la República de Honduras (agosto de 2013), se hace necesario contratar los servicios profesionales de un consultor que realice la consultoría “**Asesor Residente para la Implementación de Concesiones Viales**”.

SEGUNDA: DESCRIPCIÓN DE LOS SERVICIOS. **EL CONSULTOR** prestará los Servicios que se especifican en el Anexo A, “**Términos de Referencia**”, que forma parte integral de este Contrato.

En virtud de sus conocimientos, se aclara que El CONSULTOR no recibirá disposiciones u órdenes en relación de dependencia laboral, sino única y exclusivamente instrucciones referentes a la asesoría y prestación de servicios profesionales previstos en el Anexo A. Los servicios profesionales se ejecutarán de acuerdo a los requerimientos y a las necesidades del CONTRATANTE.

TERCERA: COORDINACIÓN CON EL CONTRATANTE. Para propósitos administrativos, el CONTRATANTE designa a **Directora del Programa Umbral**, para administrar los servicios de consultoría y proveer al CONSULTOR toda la información relevante para ejecutar sus actividades, quien será responsable de la coordinación de las actividades contempladas en este Contrato, de la recepción y aprobación de las facturas para cursar los pagos, y la aceptación y aprobación por parte del CONTRATANTE de los informes u otros productos que deban proporcionarse.

CUARTA: VALIDEZ Y DURACIÓN DEL CONTRATO. El presente contrato tendrá validez una vez suscrito por las partes contratantes. La duración será contada a partir del **6 de abril de 2015 al 5 de abril de 2016**, no continuo, o durante cualquier otro período en que las Partes pudieran convenir posteriormente por escrito.

QUINTA: HONORARIOS O MONTO DEL CONTRATO. Los pagos al consultor se realizarán de acuerdo a lo siguiente:

- Honorarios por tarifa presencial: US\$2000 x día (cubriría por su cuenta los gastos de traslado internos, viaje y estadía en Honduras).



- Primeros dos meses: Se trabajarán dos semanas seguidas de Lunes a Viernes y se reconocerá el fin de semana intermedio. Esto significaría 12 días trabajados presenciales por mes. No se reconocerán los días de traslado (venida e ida).
- Desde el tercer mes en adelante se reconocerán 5 días al mes (Lunes a Viernes). No se reconocerán los días de traslado (venida e ida).
- Honorarios tarifa a distancia tendrá un costo de US\$800 x día y se pagará según lo reportado de días trabajados durante el mes.

Los pagos de los honorarios, se realizarán según la entrega y aprobación de parte de la INSEP y MCA-H, de los productos establecidos en el Anexo A:

SEXTA: RESOLUCIÓN DE CONTRATO. Este Contrato podrá terminarse por las siguientes causas y sin ninguna responsabilidad para MCA Honduras:

- 1) Por mutuo consentimiento de las partes;
- 2) Por muerte del *Consultor* o incapacidad física o mental del mismo, que haga imposible el cumplimiento del Contrato;
- 3) Por decisión unilateral de MCA Honduras, obligándose la Dirección Ejecutiva a dar el aviso mediante carta dirigida al Consultor la que se le entregará formalmente cuando éste se encuentre en Honduras, debiendo el Consultor suscribir su recepción. En este caso, corresponderá como último pago las actividades desarrolladas en este último viaje, en las condiciones descritas en la cláusula quinta;
- 4) Por incumplimiento de *El Consultor* de las obligaciones contraídas;
- 5) Cuando *El Consultor* sea condenado por los Juzgados o Tribunales con privación de su libertad por delitos cometidos;
- 6) Por caso fortuito o fuerza mayor;
- 7) Cuando MCA Honduras pierda la confianza en *El Consultor* en la prestación de sus servicios profesionales;
- 8) Por todo daño material causado dolosamente a los edificios, obras, mobiliario o equipo, vehículos, instrumentos y demás objetos relacionados;
- 9) Por prestar sus servicios profesionales con grave negligencia que ponga en peligro la seguridad de las personas o de las cosas;
- 10) Por cualquier acto inmoral o delictuoso que *El Consultor* cometa en el establecimiento o lugar donde presta sus servicios profesionales, debidamente comprobado ante la autoridad competente;
- 11) Por revelar o dar a conocer asuntos de carácter reservado en perjuicio de MCA Honduras;
- 12) Por inhabilidad, negligencia o ineficiencia manifiesta de *El Consultor* que haga imposible el cumplimiento del Contrato.

SEPTIMA PAGOS POR TERMINACIÓN DEL CONTRATO. Excepto por lo establecido por ley, *El Consultor*, ni sus beneficiarios, cesionarios o su sucesión tendrán derecho o reclamo alguno bajo este Contrato para recibir cesantía o cualquier otra compensación en virtud que a través del mismo no se está generando una relación de trabajo.

OCTAVA: EXCLUSIVIDAD DE SERVICIOS. *El CONSULTOR* no podrá proveer directa ni indirectamente, servicios a ninguna persona u organización que se comprometa en actividades que generen conflicto o interfieran significativamente con la leal y oportuna ejecución de los deberes de *El Consultor* según este Contrato, sin el consentimiento previo de MCA Honduras.



Esta prohibición excluye cualquier servicio ejecutado por *El Consultor* bajo la dirección del MCA Honduras.

EL CONSULTOR manifiesta que no está sujeta a ningún acuerdo, contrato, compromiso o política de un tercero que le prevenga o prohíba cumplir con las obligaciones a las cuales se compromete en este contrato. Asimismo, **el CONSULTOR** acuerda no suscribir ningún contrato, compromiso o sujetarse a cualquier política que obstaculice el cumplimiento de las obligaciones acordadas en el Contrato.

NOVENA: CONFLICTO DE INTERESES. *El CONSULTOR* manifiesta que a su mejor saber y entender ha revelado completamente a MCA Honduras cualquier circunstancia mediante la cual, el, su cónyuge y parientes hasta tercer grado de consanguinidad (incluyendo sus cónyuges, hijos y parientes hasta tercer grado de consanguinidad) tienen o podrían tener conflictos de interés con MCA Honduras. *El CONSULTOR* revelará completamente a MCA Honduras, cualquier circunstancia que pueda surgir durante la prestación de los servicios profesionales. *El CONSULTOR* manifiesta que cumplirá totalmente con las políticas y prácticas de MCA Honduras relacionada con conflictos de intereses.

DECIMA: PAGOS INDEBIDOS. *El Consultor* no pagará ni permitirá se efectúen pagos de cualquier remuneración en beneficio de ningún funcionario gubernamental, salvo los pagos requeridos o permitidos por la ley aplicable. *El CONSULTOR*, directa o indirectamente, no deberá:

- (a) Hacer o permitir ninguna contribución, regalo, soborno, rebaja, recompensa, pago inducido, o cualquier otro pago a cualquier persona o entidad, privada o pública, sin consideración de la forma, sea en dinero, propiedades o servicios:
 - (i) Para obtener un trato favorable para negocios concretados;
 - (ii) Para pagar por un trato favorable en negocios concretados;
 - (iii) Para obtener concesiones especiales o para concesiones especiales ya obtenidas; o bien,
 - (iv) En violación de cualquier requerimiento legal; o,
- (b) Establecer o mantener cualquier fondo o bien que no esté debidamente acreditado en los libros o registros de MCA Honduras. *El Consultor* deberá cumplir con el Decreto de 1977 sobre "Prácticas de Corrupción en el Extranjero" de los Estados Unidos de América, conocido como el "FCPA". *El Consultor* no tomará parte de ninguna acción que viole ninguna ley de los Estados Unidos de América. *El Consultor* se familiarizará por su cuenta de los requerimientos del "FCPA" que desconozca a la fecha.

**DECIMA
PRIMERA**

LEYES APLICABLES. Las partes manifiestan expresamente que dada la naturaleza de este contrato, el mismo estará regido por sus propias disposiciones y, supletoriamente por las disposiciones contenidas en el Convenio de Donación del Programa Umbral y por la Ley de la Cuenta del Desafío del Milenio, además de los reglamentos internos que se emitan al efecto, y en su defecto, las normas del Código Civil vigente. Asimismo, las partes manifiestan expresamente que no será aplicable a este contrato la Ley de Servicio Civil que rige a los servidores públicos del Estado.

DECIMA



SEGUNDA: PROHIBICIÓN AL CONSULTOR(A) DE PARTICIPAR EN CIERTAS ACTIVIDADES:
El Consultor(a) conviene en que, tanto durante la vigencia de este Contrato como después de su terminación, ni el Consultor(a) ni ninguna entidad afiliada a éste podrá suministrar bienes, construir obras o prestar servicios (distintos de los Servicios y de cualquier continuación de los mismos) para cualquier proyecto que se derive de los Servicios o esté estrechamente relacionado con ellos.

DECIMA

TERCERA: **CESION.** *El Consultor* no podrá ceder, delegar el Contrato, o alguno de los derechos, deberes, obligaciones e intereses bajo el mismo.

DECIMA

CUARTA: Forman Parte Integral de éste contrato el Anexo A “Términos de Referencia” y el Anexo B “Additional Provisions”

DECIMA

QUINTA: **ACEPTACIÓN DE CONDICIONES.** Ambas partes aceptan los términos del presente contrato, comprometiéndose al fiel cumplimiento del mismo.

En fe de lo cual, firman el presente Contrato en la Ciudad de Tegucigalpa, Municipio del Distrito Central a los seis días del mes de abril del año 2015.


Marco Antonio Bográn Corrales
EL CONTRATANTE


Leonel Edmundo Vivallos Medina
EL CONSULTOR



ANEXO A

Términos de Referencia

Resident Advisor, Road Concessions

1. Summary

The Millennium Challenge Account – Honduras (*MCA-Honduras*), an entity established by the Government of Honduras to manage programs funded by the Millennium Challenge Corporation (*MCC*), is now seeking the services of a professional consulting firm (*Consultant*) to provide the services described in these terms of reference (*ToR*) as part of a coordinated effort by three donor organizations – MCC, Inter-American Development Bank (*IDB*) and World Bank Institute (*WBI*) - to assist the Government of the Republic of Honduras in strengthening its capacity to develop and manage public-private partnerships (*PPPs*).

In August 2013, MCC and the Government of the Republic of Honduras signed a three-year Threshold Program agreement that provides USD\$15.6 million to assist Honduras, among other matters, in building its capacity to develop and administer PPPs according to best international practice. This assistance will support, among other things, a Consultant to (i) strengthen the capacity of the Infrastructure and Public Services Secretariat (*Secretaría de Infraestructura y Servicios Públicos - INSEP*) and the Superintendent of PPPs (*Superintendencia de Alianza Público Privada -- SAPP*) to manage their respective responsibilities related to certain road concessions identified below and other ongoing PPP contracts according to international best practice, and (ii) assist INSEP in identifying, selecting, and prioritizing candidate PPP projects that should be recommended to the Commission for the Promotion of Public-Private Partnerships (*Coalianza*) for PPP implementation. In providing this support, the Consultant will coordinate with other donors, including the IDB, WBI and Central American Bank for Economic Integration (*CABEI*), where their work overlaps with or complements Consultant's work herein.

MCA-Honduras seeks for individuals for the provision of services under this ToR from organizations that have had successful experience with the type of project described herein and are able to deliver the project management and advisory skills required by the engagement. This engagement calls for the Consultant to work in residence in Honduras to provide long-term assistance to INSEP and SAPP (*Agencies*) with regard to the services outlined herein. Further details regarding required qualifications of the Consultant are described in Section 7.

2. BACKGROUND

The Government of the Republic of Honduras has taken key decisions to develop a PPP program to support economic growth and competitiveness in Honduras and improve the quality of life of Honduran citizens. PPPs, when it can be shown that they will result in value of money (*VfM*), provide an alternative implementation approach that can improve the long term quality of service received by the Honduran people for new capital projects and other public services. Consequently, the Government of the Republic of Honduras plans to use PPPs for many new capital projects and other public services. Given PPPs also often imply certain risks and cash flow demands on the Government of the Republic of Honduras, the proper processing of PPPs, including



their development, administration and evaluation and approval are important to the efficient and transparent provision of public services. Poorly structured, or improperly processed, PPPs can result in poor results, unnecessary contingent liabilities for the Government of the Republic of Honduras and eventual lack of support for the program.

The Government of the Republic of Honduras has taken initial steps to put the right institutional and regulatory structure in place for PPPs. In 2010-11, the Government of the Republic of Honduras passed legislation that establishes the terms on which PPPs can be developed and administered in Honduras and empowers Coalianza to develop a wide range of PPPs. To date, Coalianza has developed and negotiated several PPPs, including the following road concession contracts (*Road Concessions*).

1. “Logistic Corridor” concession contract awarded to Concesionaria Vial Honduras S.A. de C.V. to (i) maintain 392 kilometers of road between Goascorán - Villa de San Antonio and Puerto Cortes – Tegucigalpa, (ii) broaden 88 kilometers of road within these sections, and (iii) build 161 kilometers of new road within these sections.
2. “Tourism Corridor” concession contract awarded to Consorcio Autopista del Atlantico to expand and maintain 123 kilometers of road sections between El Progreso – Tela, San Pedro Sula-El Progreso, and La Barca – El Progreso.
3. “Lencan Corridor” concession contract awarded to William & Molina S.A. de C.V. The project includes the construction of a bypass of Yamaranguila, rehabilitation of the sections Yamaranguila - Bishop and St. Catharines - St. John - Gracias, and maintenance of all these stretches for 4 years. Additionally, provides for the rehabilitation of stretches Gracias - Santa Rosa and San Juan - Gracias, and their maintenance for 3 years.

INSEP, SAPP and the Secretariat of Finance (*SEFIN*) each have significant responsibilities¹ related to the country’s general PPP program and the Road Concessions specifically, and each of these government agencies recognizes the need to strengthen their capacity to manage these specific responsibilities according to international best practice.

Additionally, the PPP program in Honduras recognizes the key roles of stakeholders in the public sector (Central Government, National Assembly, etc.) and private sector (investors, banks, academics, accounting firms, private companies, legal firms, contractors, developers, media, civil society, business associations, development partners, etc.). All key stakeholders must be involved in the PPP program to understand the benefits and limitations of PPPs and to support this program.

3. OBJECTIVE

The Consultant’s objective is to strengthen the capacity of the INSEP and SAPP to manage their respective responsibilities related to the Road Concessions and other ongoing PPP contracts according to international best practice.



4. SCOPE OF WORK

In order to achieve the objective of the consultancy the Consultant will (i) provide hands-on assistance in managing responsibilities related to the Road Concessions and other infrastructure contracts, and (ii) develop resources needed to effectively manage these responsibilities, such as policies, procedures, reference materials and training courses. The precise tasks needed to achieve the objective will evolve during the assignment, but will likely include working with the Agencies to ensure:

1. Development of a project management plan for each Road Concession and other ongoing PPP contracts that outlines the work to be done and commences at post tender and lasts until the relevant agreement ends;
2. Compliance with the PPP contract for each Road Concession and other on-going PPP contracts and definitive agreements related thereto (**Project Documents**) as well as compliance to law applicable to each PPP project;
3. Adherence to the output based specifications and Minimum Performance Standards and Specifications (**MPSS**), including reporting requirements, set forth in the Project Documents (and coordinating with SAPP and other relevant government agencies in overseeing the same);
4. Development of an early warning system to notify the Government of the Republic of Honduras when a PPP project company is in danger of becoming non-compliant in any of its obligations under the Project Documents;
5. Supervision of the maintenance program provided by the PPP project companies to the assets under their management and/or control and that are to be transferred to the Government of the Republic of Honduras upon expiration of the Project Documents;
6. Development of key resources the Agencies need to effectively manage their responsibilities related to the Road Concessions and other PPP contracts, including preparation of a well-documented **Operations Manual** (see note below) that sets forth procedures and reference materials that INSEP and SAPP need to effectively manage PPP contracts according to international best practice and provision of appropriate training courses to enable the Agencies to effectively use the resources above and manage their responsibilities related to PPP contracts; and
7. Coordinating with Coalianza, Ministry of Environment (SERNA), and other relevant Government of the Republic of Honduras institutions the processing of decisions related to PPP projects in Honduras and working collaboratively with these agencies and their consultants to ensure efforts are made and agreement is reached in respect of the roles and responsibilities of each oversight agency over the life cycle of a PPP projects;

In providing this support, the Consultant will coordinate with other donors, including the IDB, WBG and CABEI, where their work overlaps with or complements Consultant's work herein. It is expected that some



of these tasks may require additional short-term consultants to supplement the work of the Concessions Resident Advisor.

Specific Tasks related to the scope and content of the Operations Manual

1. The Consultant will strengthen the capacity of INSEP and SAPP to manage their respective responsibilities related to the Road Concessions and other PPP contracts according to international best practice. Among other matters, this support will include drafting an Operations Manual for each entity, identifying best practice procedures on common tasks to be undertaken in the monitoring and supervision of PPP projects. The following indicative list are tasks common to INSEP and SAPP which require procedural guidance that ensures:
 - a. Proper management and administration of a PPP contract, taking into account the legal and regulatory framework which already provides SAPP with certain responsibilities;
 - b. Adequate staffing within INSEP and SAPP to round out the required contract management staffing needed;
 - c. Review with both parties the adequacy of the current MPSS and reporting requirements imposed on the PPP Project Companies. There are many reasons why MPSS are set forth in contracts, amongst them: (a) to monitor project to determine if commercial objectives are being met; (b) as an early warning system, to verify if lenders covenants are being met; (c) to monitor the performance of the project in economic terms, i.e., what income classes are benefitting from the presence of the project and what is the values of those benefits? (d) to determine if the project is extending equal opportunities of employment irrespective of gender or indigenous origin, and other such data. This information for all PPP projects should be summarized at the end of the year and disseminated to the President and the public. It is information that is extremely important to maintain support for the PPP program;
 - d. Best practices in monitoring and supervising PPP Project Agreements including a proper division of labor between INSEP and SAPP on the scope and content of their monitoring efforts. We note that some aspects of Project Company performance may fall within the remit of both agencies. In other cases, the monitoring objective may belong to one or the other agency;
 - e. Compliance with Project Agreement and ancillary documents, including assisting Agency staff in conducting official visits to the two road concessionaires or any other such PPP project, preparing the agenda for such visits, and recording the results of such visits with copies of the latter provided to Coalianza and SEFIN for their records;
 - f. A proper model terms of reference (TOR) for the supervising engineering firm which will monitor the EPC contractor during the construction and commissioning period;
 - g. An adequate Output Based Specifications (OBS) and MPSS (including PPP Project Company reporting obligations) are set forth for each PPP project;
 - h. Complete understanding of the Project Agreement and ancillary documents. A comprehensive checklist for reviewing project agreements and ancillary documents prior to their execution to ensure coherence and consistency of terms and conditions and elimination of conflicting provisions;
 - i. Use of Manual tools and procedures to detect early issues in PPP project operations, with the objective of issuing early warnings to notify the Coalianza and SEFIN on when any PPP Project



Company appears to be in danger of becoming non-compliant in any of its obligations under the Project Documents;

- j. Development of an adequate program to track changes in contingent liabilities of each project over time,
 - k. Development of an adequate maintenance program provided to the assets under the control of the PPP Project Company that are to be transferred to the Government of the Republic of Honduras upon termination of the Project Documents;
 - l. The proper documentation of key results from the above actions;
 - m. Transfer of responsibility whenever there are changes in INSEP or SAPP team contract management teams;
 - n. Proper procedures are set forth for (i) changes in the project agreement or base case financial model, that arise as a result of requests for contract variations during construction or operations, refinancing of the project and implementing agreed terms related to sharing gains therefrom, and restructuring the project agreement as necessary following force majeure, (ii) supervising early termination activity and confirming accuracy of related termination payments, (iii) supervising asset handover on termination of the contract, (iv) helping manage disputes and their resolution, (v) approving changes in the base case financial model (in conjunction with other project stakeholders), and (vi) any other non-routine activity for which special time, focused attention and the drafting of recommended actions are needed;
 - o. Any other task that may be needed jointly by the two Agencies that will contribute to best practices in their respective roles.
2. SAPP will require additional procedural content in its Manual that provides for the following:
- a. Clarity and procedural guidance on what aspects of the PPP Project Company performance SAPP is to monitor and how it will do so;
 - b. Procedures and training of SAPP staff in auditing PPP company financial statements and determining adequacy of royalty and other payments due to Government of the Republic of Honduras;
 - c. Formulae, or best practice standards, for application of special penalties that may are not addressed in the project agreement; set forth best practice processes for handling complaints from customers; describe procedures for resolving disputes in the manner set forth in the project agreement; and entertaining and disposing of special tariff requests, if necessary;

The consultant will be available in the offices SAPP as and when required to review progress in the drafting of Manuals or in field work related to project monitoring and supervision;

3. INSEP will require additional procedural content in its Manual that provides for the following:
- a. Clarity and procedural guidance on what aspects of the PPP Project Company performance INSEP is to monitor and how it will do so;
 - b. Development of qualitative and quantitative filters that will assist in identifying candidate PPP projects from those that should be traditionally procured, and tools for prioritizing such projects for implementation;



- c. Tools to be developed within INSEP for PPP project identification and preliminary screening include (a) the development of filters to identify PPP candidate projects from those that are to be traditionally procured; (b) an understanding and application of VfM analysis: strengths and shortcomings; use of economic analysis as an aid to prioritizing the implementation of projects; an understanding and application of VGF analysis, etc.

5. REPORTING LINES

MCA-Honduras is the Government of the Republic of Honduras counterpart organization for the Threshold Program that signs all contracts and which disburses MCC funds. INSEP and SAPP are the beneficiary entities and will be the daily counterparts for the Consultant. The Minister of INSEP will nominate a technical point of contact for the Consultant and the Consultant will consult with INSEP and SAPP on all technical matters, but the Consultant will report to MCA-Honduras for all contractual and administrative matters. MCA-Honduras, INSEP and SAPP should all receive copies of the Inception Report, the Monthly Reports and the Final Report described in the section on "Deliverables".

6. DELIVERABLES

1: Inception Report - Within one month following commencement of the engagement, the Consultant will prepare an Inception Report summarizing its approach to the above tasks outlined in the Scope of Work; immediate challenges to the implementation of this Activity; and preliminary plans for completing the aforementioned Scope of Work over the tenure of the engagement including benchmarks for quarterly achievement; and an outline of the Operations Manual for INSEP and SAPP.

2: Monthly Management Reports - At the end of each month, the Consultant will prepare a succinct but substantive and comprehensive Monthly Report documenting

- (a) actions taken during the previous month;
- (b) plans for actions to be taken over the coming month(s);
- (c) immediate and near-term challenges for the engagement;
- (d) exogenous events that impact;
- (e) progress in meeting the benchmark established in the Inception Report;
- (f) recommendations for near-term implementation; and
- (g) comments on other noteworthy issues.

3: Close-out Report - At the conclusion of the engagement, the Consultant will prepare a comprehensive close-out report documenting:

- (a) actions taken during the course of the engagement;
- (b) planned actions that were not taken and the reasons for the failure of do so;
- (c) immediate and near term challenges for INSEP or SAPP;
- (d) exogenous events, both actual and prospective that affect the progress made during the engagement;
- (e) Progress made viz-a-viz the benchmarks established in the Inception Report and commented-upon in the Monthly Reports;



(f) lessons learned during the delivery of the Project; and

(g) final comments on other noteworthy issues.

4: Operations Manual for INSEP and SAPP. In addition, drafts of the Operations Manual for each of INSEP and SAPP will be submitted to MCA-Honduras at the end of each of the first four quarters to discuss progress, challenges and any other issue related to their scope and content.

7. Payments

Payments will be made to the Consultant on a monthly basis. At the end of each month the Consultant shall submit a monthly progress report for the previous month. Payments shall be made after the conditions listed in the SCC for such payment have been met, and the Consultant has submitted an invoice to MCA-Honduras specifying the amount due. Each payment will be made not earlier than the timing indicated in the contract, but only when deliverable(s) has/have been submitted and accepted by INSEP and MCA-Honduras.

8. Equipment, Facilities and Logistical Support

INSEP will provide:

- Office space, one desk and chair.
- Internet connection, printer, and a telephone.

The Consultant shall be responsible for:

- All local and international transports and housing.
- All relevant insurances.
- Cell phone
- Laptop computer



ANEXO B Additional Provisions

General Provisions

Capitalized terms that are used but not defined in this Annex shall have the meaning given to them in the agreement to which this Annex is attached and that certain Millennium Challenge Compact by and between the United States of America, acting through MCC, and the Government, signed in [City] on [Date], as may be amended from time to time.

The Client is responsible for the oversight and management of the implementation of the Compact on behalf of the Government and intends to apply a portion of the proceeds of the Compact to eligible payments under the Contract, provided that (a) such payments will only be made at the request of and on behalf of the Client and as authorized by the Fiscal Agent, (b) MCC shall have no obligations to the Consultant under the Compact or the Contract, (c) such payments will be subject, in all respects, to the terms and conditions of the Compact, and (d) no party other than the Government and the Client shall derive any rights from the Compact or have any claim to MCC Funding.

A. **MCC Status; Reserved Rights; Third-Party Beneficiary**

1. MCC Status. MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of the Compact. As such, MCC has no liability under the Contract and is immune from any action or proceeding arising under or relating to the Contract. In matters arising under or relating to the Contract, MCC is not subject to the jurisdiction of the courts or any other juridical or other body of any jurisdiction.

2. MCC Reserved Rights.

(a) Certain rights are expressly reserved to MCC under the Contract, the Compact and other related Compact documents, including the right to approve the terms and conditions of the Contract, as well as any amendments or modifications hereto, and the right to suspend or terminate the Contract.

(b) MCC, in reserving such rights under the Contract, the Compact or other related Compact documents, has acted solely as a funding entity to assure the proper use of United States Government funds, and any decision by MCC to exercise or refrain from exercising these rights shall be made as a funding entity in the course of funding the activity and shall not be construed as making MCC a party to the Contract.

(c) MCC may, from time to time, exercise its rights, or discuss matters related to the Contract with the Parties or the Government, as appropriate, jointly or separately, without thereby incurring any responsibility or liability to any party.

(d) Any approval (or failure to approve) or exercise of (or failure to exercise) any rights by MCC shall not bar the Government, the Client, MCC or any other person or entity from asserting any right against the Consultant, or relieve the Consultant of any liability which the Consultant might otherwise have to the Government, the Client, MCC, or any other person or entity. For the purposes of this clause (d), MCC shall be deemed to include any MCC officer, director, employee, affiliate, contractor, agent or representative.



3. Third-Party Beneficiary. MCC shall be deemed to be a third-party beneficiary under the Contract.

B. Limitations on the Use or Treatment of MCC Funding

The use and treatment of MCC Funding in connection with the Contract does not, and shall not, violate any limitations or requirements specified in the Compact or any other relevant agreement or Implementation Letter or applicable Laws or United States Government policy. No MCC Funding shall be used for military purposes, for any activity likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, to support any activity likely to cause a significant environmental, health or safety hazard, or to fund abortions or involuntary sterilizations as a method of family planning. MCC Funding shall be free from the payment or imposition of all Taxes as set forth in the Compact.

C. Procurement

The Consultant shall ensure that all procurements of goods, works or services under, related to or in furtherance of the Contract shall be consistent with the general principles set forth in the Compact and in the MCC Program Procurement Guidelines from time to time in effect as posted on the MCC website at www.mcc.gov. The Consultant shall comply with the eligibility requirements related to prohibited source or restricted party provisions in accordance with U.S. Laws, regulations and policy, applicable World Bank policies or guidelines and in accordance with other eligibility requirements as may be specified by MCC or the Client.

D. Reports and Information; Access; Audits; Reviews

Reports and Information. The Consultant shall maintain such books and records and provide such reports, documents, data or other information to the Client in the manner and to the extent required by the Compact or related documents, and as may be reasonably requested by the Client from time to time in order to comply with its reporting requirements arising under the Compact or related documents. MCC may freely use any information it receives in any report or document provided to it in any way that MCC sees fit. The provisions of the Compact and related documents that are applicable to the Government in this regard shall apply, *mutatis mutandis*, to the Consultant as if the Consultant were the Government under the Compact.

Access; Audits and Reviews. Upon MCC's request, the Consultant shall permit authorized representatives of MCC, an authorized Inspector General of MCC, the United States Government Accountability Office, any auditor responsible for an audit contemplated by the Compact or conducted in furtherance of the Compact, and any agents or representatives engaged by MCC or the Government to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect activities funded by MCC Funding. The provisions of the Compact and related documents that are applicable to the Government in this regard shall apply, *mutatis mutandis*, to the Consultant as if the Consultant were the Government under the Compact.

Application to Providers. The Consultant shall ensure the inclusion of the applicable audit, access and reporting requirements from the Compact in its contracts or agreements with other providers in connection with the Contract.

E. Compliance with Anti-Corruption, Anti-Money Laundering, Terrorist Financing, and Trafficking in Persons Statutes, and Other Restrictions

1. The Consultant shall ensure that no payments have been or will be made by the Consultant to any official of the Government, the Client, or any third party (including any other government official) in connection with the Contract in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a et seq.) (the "FCPA") or that would otherwise be in violation of the



FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to the Contract, including any local Laws. The Consultant affirms that no payments have been or will be received by any official, employee, agent or representative of the Consultant in connection with the Contract in violation of the FCPA or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to the Contract, including any local Laws.

2. The Consultant shall not provide material support or resources directly or indirectly to, or knowingly permit MCC Funding to be transferred to, any individual, corporation or other entity that the Consultant knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (i) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury's Office of Foreign Assets Control, which list is available at www.treas.gov/offices/enforcement/ofac, (ii) on the consolidated list of individuals and entities maintained by the "1267 Committee" of the United Nations Security Council, (iii) on the list maintained on www.sam.gov, or (iv) on such other list as the Client may request from time to time. For purposes of this provision, "material support and resources" includes currency, monetary instruments or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

3. The Consultant shall ensure that its activities under the Contract comply with all applicable U.S. Laws, regulations, executive orders, and policies regarding money laundering, terrorist financing, trafficking in persons, U.S. sanctions Laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. § 1956, 18 U.S.C. § 1957, 18 U.S.C. § 2339A, 18 U.S.C. § 2339B, 18 U.S.C. § 2339C, 18 U.S.C. § 981, 18 U.S.C. § 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under the Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the Client, the Fiscal Agent, or the Bank, as may be applicable. The Consultant shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set out in Part 10 of the MCC Program Procurement Guidelines (Eligibility Verification Procedures) that can be found on MCC's website at www.mcc.gov. The Consultant shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the Client or MCC may request from time to time and (B) deliver a report of such periodic monitoring to the Client with a copy to MCC.

4. Other restrictions on the Consultant shall apply as set forth in the Compact or related documents with respect to any activities in violation of other applicable United States Laws, regulations, executive orders, or policies, any misconduct injurious to MCC or the Client, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its



responsibilities or obligations under or in furtherance of the Compact or any related document or that materially and adversely affects the Program assets or any Permitted Account.

F. Publicity, Information, and Marking

1. The Consultant shall cooperate with the Client and the Government to provide the appropriate publicity to the goods, works and services provided under the Contract, including identifying Program activity sites and marking Program assets as goods, works and services funded by the United States Government, acting through MCC, all in accordance with the MCC Standards for Global Marking available on the MCC website at <http://www.mcc.gov>; provided, however, that any press release or announcement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, shall be subject to MCC's prior written approval and must be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters.

2. Upon the termination or expiration of the Compact, the Consultant shall, upon MCC's request, cause the removal of any such markings and any references to MCC in any publicity materials.

G. Insurance

The Consultant shall obtain insurance, performance bonds, guarantees or other protections appropriate to cover against risks or liabilities associated with performance of the Contract. The Consultant shall be named as payee on any such insurance and the beneficiary of any such performance bonds and guarantees. The Client, and at MCC's request MCC, shall be named as additional insureds on any such insurance or other guarantee, to the extent permissible under applicable Laws. The Consultant shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss or to pursue the procurement of the covered goods, works and services; provided, however, that, at MCC's election, such proceeds shall be deposited in an account as designated by the Client and acceptable to MCC or as otherwise directed by MCC.

H. Conflict of Interest

The Consultant shall ensure that no officer, director, employee, affiliate, contractor, subcontractor, agent, advisor, or representative of the Consultant participates in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with the Contract, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the parties under the Contract and MCC the conflict of interest and, following such disclosure, the parties to the Contract agree in writing to proceed notwithstanding such conflict. The Consultant shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors, or representatives involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with the Contract shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time. The Consultant shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives engage in any activity which is, or gives the appearance of being, a conflict of interest in connection with the Contract. Without limiting the foregoing, the Consultant shall comply, and ensure compliance, with the applicable conflicts of interest and ethics policies of the Client as provided by the Client to the Consultant.



I. Inconsistencies

In the event of any conflict between the Contract and the Compact and/or the Program Implementation Agreement, Procurement Agreement, or Disbursement Agreement, as applicable, the term(s) of the Compact and/or the Program Implementation Agreement, Procurement Agreement, or Disbursement Agreement, as applicable, shall prevail.

J. Other Provisions

The Consultant shall abide by such other terms or conditions as may be specified by the Client or MCC in connection with the Contract.

K. Flow-Through Provisions

In any subcontract or sub-award entered into by the Consultant, as permitted by the Contract, the Consultant shall ensure the inclusion of all the provisions contained in paragraphs (A) through (J) above.